

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MATTHEW KUTOLOSKI,

Plaintiff

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant

CIVIL ACTION

No. 05-5925

ORDER

AND NOW, this 5th day of March, 2007, upon consideration of the parties' cross-motions for summary judgment and after review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice, defendant's objections thereto, and the entire record, IT IS ORDERED that:

1. Pursuant to Federal Rule of Civil Procedure 60(a), the citation "66 Fed. Reg. 50746" at page ten of the Report and Recommendation (Docket No. 13) is AMENDED to read "65 Fed. Reg 50746";
2. The Report and Recommendation, as amended by the previous paragraph, is APPROVED and ADOPTED;
3. Defendant Commissioner's Motion for Summary Judgment is DENIED;
4. Plaintiff's Motion for Summary Judgment is GRANTED insofar as plaintiff

- requests that the matter be vacated and remanded;
5. The final decision of the Commissioner denying disability benefits to
Matthew Kutoloski is VACATED; and
6. The matter is REMANDED to the Commissioner, pursuant to sentence four
of 42 U.S.C. § 405(g),¹ for further proceedings consistent with Magistrate
Judge Rice's Report and Recommendation, as adopted by this Order.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.

¹ Because the remand is pursuant to sentence-four of § 405(g), a separate judgment shall be entered as required by *Kadelski v. Sullivan*, 30 F.3d 399, 402 (3d Cir.1994). See also *Shalala v. Schaefer*, 509 U.S. 292, 296-98 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 101-102 (1991).